

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Order of  
Conditional License And Order to  
Forfeit a Fine against the Family  
Child Care License of Jodie Houle  
under Minn. R. 9502.0300 to  
9502.0445

**FINDINGS OF FACT, CONCLUSIONS  
AND RECOMMENDATION**

The above matter came on for hearing before Administrative Law Judge M. Kevin Snell on April 27, 2007, at the Wright County Human Services Building, 1004 Commercial Drive, Buffalo, Minnesota 55313. The OAH record closed at the end of the hearing on April 27, 2007.

Ann L. Hohaupt, Assistant Wright County Attorney, 10 Second Street NW, Buffalo, Minnesota 55313-1189, appeared on behalf of the Department of Human Services. The licensee, Jodie Houle, appeared on her own behalf, without counsel.

**STATEMENT OF THE ISSUE**

The issue is whether the Department of Human Services' order of conditional license and order to forfeit a fine against Jodie Houle's family day care license should be affirmed.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. Jodie Houle ("Ms. Houle") a single mother of five children, has been licensed to provide family child care services for over 10 years, in recent years at her home at 4093 Jansen Avenue NE, St. Michael, Minnesota, Minnesota 55376 ("the home").<sup>1</sup> She has had no licensing violations and no correction orders, with the exception of those at issue in this proceeding.<sup>2</sup>

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<sup>1</sup> Testimony of Jodie Houle, Exhibit 3.

<sup>2</sup> *Id.*, Ex. 1, testimony of Lisa Gertken, Wright County license investigator.

2. In January 2006, Ms. Houle cared for three infants and three preschoolers. Two of the preschoolers are her nephews.<sup>3</sup> She used her mother as a substitute caregiver two or three times a week. A background study had not been done on her mother.<sup>4</sup>

3. On January 13, 2006,<sup>5</sup> Ms. Houle left her 13-year-old daughter home alone to care for Ms. Houle's two and four-year-old nephews while Ms. Houle drove to her son's school to bring him his medication.<sup>6</sup> Her other daycare children accompanied her on that trip

4. Ms. Houle had not received car seat training prior to January 13, 2006, although she did have written permission from daycare parents to transport their children.<sup>7</sup>

5. Neither Ms. Houle's mother nor her daughter had recently taken Sudden Infant Death (SIDS) or shaken baby syndrome training prior to caring for infants.<sup>8</sup>

6. On January 17, 2007, Wright County Licensing Investigator Emily Way made unannounced visits to the day care home.<sup>9</sup> On that date Ms. Way issued a Correction Order, to be completed by March 8, 2006, for:

- a. Licensee's lack of training for car seats and transporting children; and
- b. Lack of shaken baby training by substitute and helper; and
- c. Lack of CPR and first aid training by substitute; and
- d. Having a substitute without a background study; and
- e. Using a substitute under 18 years of age.<sup>10</sup>

7. Ms. Houle told Ms. Way that all of the training needed wasn't available right away and was told by Ms. Way to get them done as soon as possible.<sup>11</sup>

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<sup>3</sup> Ex. 1.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* The document titled Licensing Complaint Form, part of Exhibit 1, lists the events as having occurred in January of 2005. However, the dates listed for the complaint and the assignment of the investigation list January 2006.

<sup>6</sup> Ex. 1.

<sup>7</sup> Exs. 3 & 4.

<sup>8</sup> Ex. 1.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Ex. 3.

8. On March 8, 2006, Ms. Houle was issued a second correction order for the failure of the substitute and helper to get the required training.<sup>12</sup> On March 16, 2006, Ms. Houle returned the correction order showing that she, her mother and her daughter had completed all required training.<sup>13</sup>

9. Since March 16, 2006, Ms. Houle has been in compliance with all applicable rules and regulations relating to her daycare.<sup>14</sup>

### **Procedural Findings**

10. On January 20, 2006, Wright County recommended that the Department impose a \$300.00 fine and issue an order of conditional license, pursuant to Minn. Stat. § 245A.07.<sup>15</sup>

11. On January 25, 2007, the Department issued to Ms. Houle its Order to Forfeit a Fine in the amount of \$600.00, and Order of Conditional License.<sup>16</sup>

12. Ms. Houle filed a timely appeal from the Orders and requested an appeal hearing pursuant to Minn. Stat. § 245A.07.<sup>17</sup>

13. On February 21, 2007, Jerry Kerber, Director, Division of Licensing, Minnesota Department of Human Services, executed a Notice of and Order for Hearing scheduling a contested case hearing on April 27, 2007.

14. On April 5, 2007, an Administrative Law Judge issued a Protective Order, which was served upon the parties by mail on that date.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judge and the Minnesota Department of Human Services have authority to consider and rule on the issues in this contested case hearing pursuant to Minn. Stat. §§ 14.50 and 245A.08.

2. The Department gave proper notice of the hearing, and all relevant substantive and procedural requirements of law or rule have been fulfilled.

3. Minn. Stat. § 245A.07, subd. 3, allows the Commissioner to suspend or revoke a license, or impose a fine if a license holder fails to comply

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<sup>12</sup> Ex. 1.

<sup>13</sup> *Id.*

<sup>14</sup> Test. of Lisa Gertken and Jodie Houle.

<sup>15</sup> Ex. 1.

<sup>16</sup> Ex. 2.

<sup>17</sup> Ex. 3.

with the applicable laws or rules. Notice of any such action must be given by certified mail and must state the reasons for the sanction.

4. Under Minn. Stat. § 245A.08, subd. 3, the burden of proof first lies with the Commissioner, who may demonstrate reasonable cause for the action taken by submitting statements, reports, or affidavits to substantiate the allegations that the license holder failed to comply fully with applicable law or rule. If the Commissioner demonstrates that reasonable cause existed, the burden shifts to the license holder to demonstrate by a preponderance of the evidence that she was in full compliance with those laws or rules allegedly violated, at the time that the Commissioner alleges the violations occurred.

5. Minn. Stat. § 245C.03, subd. 1(3) requires that background studies be conducted regarding “current or prospective employees or contractors of the applicant who will have direct contact with persons served by the facility, agency, or program.”

6. The Commissioner has advanced evidence establishing reasonable cause to believe that Ms. Houle failed to have a background study completed on her mother, a substitute caregiver, before caring for daycare children. Ms. Houle has failed to demonstrate by a preponderance of the evidence that she was in full compliance with § 245C.03, subd. 1(3) as alleged by the Department.

7. Minn. Stat. § 245A.144 requires that all caregivers have SIDS and shaken baby training before assisting in the care of infants.

8. The Commissioner has advanced evidence establishing reasonable cause to believe that Ms. Houle failed to have her substitute and helper recently trained in SIDS and shaken baby syndrome, in violation of Minn. Stat. § 245A.144. Ms. Houle has failed to demonstrate by a preponderance of the evidence that she was in full compliance with Minn. Stat. § 245A.144 as alleged by the Department.

9. Minn. Stat. § 245A.14 requires that all caregivers have CPR and first aid training.

10. The Commissioner has advanced evidence establishing reasonable cause to believe that Ms. Houle failed to have her substitute and helper recently trained in CPR and first aid, in violation of Minn. Stat. § 245A.14. Ms. Houle has failed to demonstrate by a preponderance of the evidence that she was in full compliance with Minn. Stat. § 245A.14 as alleged by the Department.

11. Minn. Stat. § 245A.18 requires that all caregivers have training in child passenger restraint systems prior to transporting children under age nine.

12. The Commissioner has advanced evidence establishing reasonable cause to believe that Ms. Houle failed to have the required training for child passenger restraint systems, in violation of Minn. Stat. § 245A.18. Ms. Houle has failed to demonstrate by a preponderance of the evidence that she was in full compliance with Minn. Stat. § 245A.18 as alleged by the Department.

13. The Department has failed to advance evidence establishing reasonable cause to believe that Ms. Houle failed to comply with Minn. R. 9502.0405, regarding written permission to transport children.

14. Minn. Stat. § 245A.07, subd. 1, requires the Commissioner to consider “the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights” of those persons in a licensee’s program before applying sanctions under Minn. Stat. § 245A.07.

15. These Conclusions are reached for the reasons set forth in the Memorandum below, which is hereby incorporated by reference into these Conclusions.

16. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions, and as Findings any Conclusions that are more appropriately described as Findings.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

Based upon these Conclusions, the Administrative Law Judge recommends to the Commissioner of Human Services that:

1. The order of conditional license of the family day care license of Ms. Jodie Houle be withdrawn and rescinded; and
2. The order to forfeit a fine be revised to impose a fine in the amount of \$200.00.

Dated: June 1, 2007

s/M. Kevin Snell

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M. Kevin Snell

Administrative Law Judge

Reported: Tape recorded (one (1) tape); no transcript prepared.



## NOTICES

This report is a recommendation, not a final decision. The Commissioner of Human Services will issue a final decision after reviewing the administrative record, and he may adopt, reject or modify the Administrative Law Judge's Findings of Fact, Conclusions, and Recommendations. The parties have 10 calendar days after receiving this recommended decision in which to file any exceptions to the report with the Commissioner.<sup>18</sup> Parties should contact the office of Cal Ludeman, Commissioner of Human Services, Box 64998, St. Paul MN 55155, (651)431-2907 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minnesota law, the Commissioner of Human Services is required to serve his final decision upon each party and the Administrative Law Judge by first-class mail.

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<sup>18</sup> Minn. Stat. § 14.61.

## **MEMORANDUM**

The Commissioner presented the testimony of the County licensing investigator, a licensing complaint form, and letters issued to the Commissioner from Wright County to show that Ms. Houle did not comply with all the rules and laws applicable to family child care. The testimony and documentary evidence submitted by the County at the hearing showed that: 1) Ms. Houle failed to have a background study done on her mother, a substitute caregiver; and 2) failed to have all current training required for herself, her mother and her daughter, a helper. Accordingly, the Commissioner established that reasonable cause existed to apply sanctions.

Imposing a conditional license on a daycare licensee and determining what, if any, fine to impose is within the Commissioner's discretion. Ms. Houle could certainly be expected to know she had to have a background investigation done on her mother as a substitute caregiver. That violation, therefore clearly warrants some fine. On the other hand, Ms. Houle and her mother and daughter became compliant as promptly as possible after receiving the initial correction order.<sup>19</sup> Moreover, at the hearing, Wright County Human Services stated that it had no position on lack of a conditional license and the amount of any fine that might be imposed. Considering the nature, the relative lack of chronicity and severity of that violation and the others, as well as the fact that Ms. Houle's noncompliance did not adversely impact the health, safety, or rights of the children in Ms. Houle's program, the ALJ recommends that the Commissioner impose a conditional license on Ms. Houle but reconsider the amount of the fine to be assessed. Perhaps a single fine of \$200.00 might be sufficient under the circumstances.<sup>20</sup>

Facts given material weight include Ms. Gertken's testimony that: Ms. Houle, her substitute and helper have: completed all tasks assigned under the under the January 20, 2006, recommendation for a conditional license, and the January 27, 2007, Order for Conditional License; Ms. Houle, her mother and daughter completed all training and certification by March 16, 2006; and Ms. Houle fully and completely cooperated with Wright County Human Services Agency. Ms. Gertken further testified that everything is going well at Ms. Houle's daycare. Because, for all practical purposes, Ms. Houle has been operating under a conditional license since January 20, 2006, the Administrative Law Judge has determined that it is unnecessary for her to operate under a conditional license for another year.

For all of these reasons, the Administrative Law Judge recommends that the order of conditional license be rescinded, and the fine be reduced.

**M. K. S.**

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<sup>19</sup> Findings 6 - 9.

<sup>20</sup> Minn. Stat. § 245A.07, subd. 1.